

General Information Letter: The amount of film production services credit allowable is determined by the Department of Commerce and Economic Opportunity.

December 12, 2006

Dear:

This is in response to your email dated December 11, 2006, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

In your email you stated that you are currently structuring a transfer of an amount of Film Production Services Tax Credit, as allowed in Section 213 of the Illinois Income Tax Act (35 ILCS 5/213), and "would very much appreciate, as would our buyer, assurances from your department that there is no risk of 'transferee liability' or 'recourse to the buyer'."

Response

Section 213 of the Illinois Income Tax Act provides, in part:

For tax years beginning on or after January 1, 2004, a taxpayer who has been awarded a tax credit under the Film Production Services Tax Credit Act is entitled to a credit against the taxes imposed under subsections (a) and (b) of Section 201 of this Act *in an amount determined by the Department of Commerce and Economic Opportunity under the Film Production Services Tax Credit Act.* . . .

A transfer of this credit may be made by the taxpayer earning the credit within one year after the credit is awarded in accordance with rules adopted by the Department of Commerce and Economic Opportunity. (emphasis added)

The Department of Commerce and Economic Opportunity has published proposed regulations implementing these provisions at 30 Ill. Reg. 15316 (September 29, 2006). The new regulations and amendments to existing regulations proposed in this rulemaking are not final or binding, and may be changed. However, as currently proposed, 14 Ill. Adm. Code Section 528.70 provides for a film production company that has received tentative approval for a credit for a particular production to file with the Department of Commerce and Economic Opportunity a request for a "tax credit certificate," which must include an itemized statement of the expenditures qualifying for the credit, documentation of those expenditures, and an attestation of the computations and documentation by an independent certified public accountant. Proposed 14 Ill. Adm. Code Section 528.71 provides that the Department of Commerce and Economic Opportunity shall review the application and the attached documentation, and only after such review and approval by the Department of Commerce and Economic Opportunity will a tax credit certificate be issued under proposed 14 Ill. Adm. Code Section 528.75. A transfer of the certificate may be made only with the prior approval of the Department of Commerce and Economic Opportunity under proposed 14 Ill. Adm. Code Section 528.85, which provides that the Department of Commerce and Economic Opportunity will issue a certificate of transfer to the transferee, documenting its entitlement to claim the amount of credit

transferred.

The Department of Revenue has promulgated a regulation at 86 Ill. Adm. Code Section 100.2185, which provides in subsection (a):

For taxable years beginning on or after January 1, 2004, a taxpayer awarded a credit under the Film Production Services Tax Act [35 ILCS 15] *is entitled to a credit against the taxes imposed under subsections (a) and (b) of IITA Section 201 in an amount determined by the Department of Commerce and Economic Opportunity* (IITA Section 213). The amount of the credit shall be the amount shown on the Final Film Tax Credit Certificate issued by the Department of Commerce and Economic Opportunity under 14 Ill. Adm. Code 528.80.

Amendments have not yet been proposed to make this section match the regulations proposed by the Department of Commerce and Economic Opportunity.

As stated in 86 Ill. Adm. Code Section 100.2185(a), a taxpayer is entitled to the credit determined by the Department of Commerce and Economic Opportunity, and the amount of the credit is the amount shown on the certificate issued by the Department of Commerce and Economic Opportunity. The regulations proposed by the Department of Commerce and Economic Opportunity provide that review and approval of the credit shall be made by the Department of Commerce and Economic Opportunity before the certificate is issued, and make no provision for review or amendment of a certificate after it is issued. Accordingly, although these existing and proposed regulations are subject to change, in their current form they make no provision for revoking or reducing the amount of credit after a certificate has been issued by the Department of Commerce and Economic Opportunity, or for revoking or reducing the amount of credit transferred to another party after the transfer has been approved and a new certificate issued by the Department of Commerce and Economic Opportunity.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax